IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 385 of 2007(U)

PETITIONERS:

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1. CHERUKAT FATHIMA, AGED 60 YEARS,
W/O.LATE MOIDEEN, CHERUKAT HOUSE,
PATHAPIRIYAM P.O., EDAVANNA VILLAGE,
MALAPPURAM DISTRICT.

2. CHERUKAT SAMSAR BEEGAM,
W/O.ABDULLA, DO. DO.

3. SAINABHA CHERUKAT,
W/O.VEERANKUTTY, DO. DO.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS:

1.THE EDAVANNA GRAMA PANCHAYATH,
REP. BY ITS SECRETARY,
EDAVANNA, MALAPPURAM DISTRICT.

2.THE DISTRICT MEDICAL OFFICER (WEALTH),
MALAPPURAM DISTRICT.

3.THE POLLUTION CONTROL BOARD,
REP. BY THE ENVIRONMENTAL ENGINEER,
DISTRICT OFFICE, MALAPPURAM.

4.NOOR SALAM K., S/O.SAIDALAVI,
KELIKODAN HOUSE, "DARUL ISSAM",
PATHAIRIYAM, COLONY ROAD, PATHAPIRIYAM,
EDAVANNA.

*ADDL.R5.THE SUB INSPECTOR OF POLICE, EDAVANNA.

WPC 385/07

*ADDL.R5 IS IMPLEADED AS PER THE ORDER DATED 19.2.2007.

R4 BY ADV. SRI.V.K.SUNIL
SRI.AJEY THOMAS
R1 BY ADV.SRI.K.M.SATHYANATHA MENON
R3 BY ADV.MR.M.K.CHANDRAMOHAN DAS
R2 & R5 BY GOVT. PLEADER SMT.T.B.RAMANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.385 of 2007

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Dated: 22nd March, 2007

JUDGMENT

The grievance of the petitioners is that the 4th respondent is conducting a furniture factory without obtaining any licence whatsoever from the 1st respondent-Panchayat and without obtaining consent from the third respondent, the Pollution Control Board.

2. Even though pleadings have not been raised by any of the respondents, all of them appear through counsel. I have heard the submissions of Mr.Sajeevkumar K.Gopal, counsel for the petitioners, Mr.V.K.Sunil, counsel for the 4th respondent, Mr.K.M.Sathianatha Menon, counsel for the 1st respondent-Panchayat, Mr.M.K.Chandramohan Das, counsel for the 3rd respondent and Smt.T.B.Ramani, learned Government Pleader.

3. On considering the Writ Petition for admission on 4.1.2007, I passed an interim order restraining the 4th respondent from conducting the unit unless he is having a current valid licence issued by the Panchayat. On 1.2.2007 when the case was considered again, Mr.V.K.Sunil, counsel for the 4th respondent submitted that no machineries will be operated since for operating machineries a licence is necessary in terms of Section 233 of the Panchayat Raj Act and he submitted that presently only hand tools will be used for

making furniture. On a complaint by the petitioner that in spite of the order passed on 1.2.2007, the 4th respondent is continuing to operate machineries, the additional 5th respondent was impleaded and the 5th respondent was directed to ensure that the 4th respondent does not make use of any of the machineries in his unit and that he makes furniture only manually, i.e. by using own hand tools. Today when the case came up for consideration, the Government Pleader on the basis of the instructions submits that the 4th respondent is making furniture with his hand tools only. Learned standing counsel for the Panchayat submitted that even for making furniture with carpenters' hand tools licence is necessary and such was the practice which was followed in the Panchayat. He further submitted that already the Panchayat has issued a stop memo to the 4th respondent. However, learned Standing Counsel was unable to inform as to whether a notification has been issued by the Panchayat in terms of Section 232 of the Act including the furniture making also an activity requiring licence. On behalf of the Pollution Control Board, it was submitted that consent has been issued by the Pollution Control Board only for making furniture manually and not by operating any machineries.

4. Considering the obvious position that the Panchayat has not

so far notified furniture making by carpenters as an activity requiring licence for the purpose of Section 232 of the Act, I do not think that this court will be justified in interdicting the 4th respondent making furniture using hand tools especially, when though subsequent to the filing of the Writ Petition, the Pollution Control Board has given consent. Mr.V.K.Sunil submits that the 4th respondent is yet to receive any stop memo from the Panchayat. Considering the rival submissions addressed before me, this Writ Petition will stand disposed of issuing the following directions:

1. The 4th respondent shall not install or operate any machineries at his work place unless and until licence in that regard are issued to him by the 1st respondent-Panchayat.

2. The order of this court permitting the 4th respondent to make furniture in his work place by using his hand tools will continue to operate.

3. The 5th respondent as well as the concerned functionaries of the Pollution Control Board will conduct fortnightly inspections on the premises of the 4th respondent and ensure that the 4th respondent is not violating the order passed by this court and is not using any machineries other than hand tools.

As and when the 4th respondent receives the stop memo which is stated to have been issued to him by the Panchayat, he will file reply to the same and the Panchayat will hear the 4th respondet and take a decision on that. This Writ Petition will not stand in the way of the petitioners approaching the local civil court or any other authority if they have a grievance that the directions in this judgment are being violated by the 4th respondent with the connivance of the 5th respondent or the functionaries of the Pollution Control Board.

srd **PIUS C.KURIAKOSE, JUDGE**